

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:10cr23

UNITED STATES OF AMERICA)	PRELIMINARY ORDER OF FORFEITURE OF SUBSTITUTE RES
v.)	
KEITH FRANKLIN SIMMONS)	
)	

THE COURT FINDS AS FOLLOWS:

On February 22, 2011, after a jury found Defendant guilty of securities fraud, wire fraud, and money laundering (Doc. No. 39: Verdict), this Court entered a Consent Order and Judgment of Forfeiture against, among other assets, thirty-five shares of XFC and fifty-one shares of XF Corporation (Doc. No. 40). The Government, John Prisco, an executive of XFC and XF Corporation, and counsel for Prisco, XFC, and XF Corporation have proposed to this Court that \$30,736.62 seized from SunTrust Bank Account Number XXXXXXXXX3257 held in the name of XF Corporation should be forfeited to the Government as a substitute res for all forfeited shares of XFC and XF Corporation. In addition, the parties have proposed that, if this Court orders forfeiture of the \$30,736.62 in lieu of the shares, the shares should be released to XFC and XF Corporation.

WHEREFORE, FOR THE REASONS SET FORTH IN THE MOTION FOR PRELIMINARY ORDER OF FORFEITURE OF SUBSTITUTE RES, THE COURT ORDERS AS FOLLOWS:

1. There is a nexus between the \$30,736.62 in funds seized from SunTrust Bank Account Number XXXXXXXXX3257 held in the name of XF Corporation and the offenses of which Defendant was found guilty, and the \$30,736.62 in funds are forfeited to the United

States, pursuant to 18 U.S.C. §§ 981 and 982, and/or 28 U.S.C. § 2461, as a substitute res for the shares of XFC and XF Corporation identified in the Consent Order and Judgment of Forfeiture.

2. The Government shall retain the \$30,736.62 in funds seized from SunTrust Bank Account Number XXXXXXXXXX3257. The Government shall return the \$3,913.67 in funds seized from Prisco's personal accounts to Prisco acting in his personal capacity. The Government shall return the \$55,000 Promissory Note for the benefit of XF Corporation and the shares of XFC and XF Corporation to Prisco in his capacity as an executive of XFC and XF Corporation.

3. The Government shall provide notice of this Order in accordance with 21 U.S.C. § 853(n)(2) and other applicable law that any person, other than Defendant, asserting a legal interest in property which has been ordered forfeited to the United States may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing to adjudicate the validity of his or her alleged interest in the property. Following the disposition of all timely petitions filed, a final order shall be entered.

Signed: May 9, 2011



Robert J. Conrad, Jr.
Chief United States District Judge

